

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

In Re: Ruling Request

Refer Reply To:

CC:PSI:B04

PLR-123619-15

Date:

December 07, 2015

Taxpayer	=
Spouse	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
X	=
Y	=
Z	=

Dear :

This letter responds to your personal representative's letter of July 6, 2015, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to transfers to a trust.

On Date 1, Spouse established an irrevocable trust (Trust). Trust has GST potential. On Date 2, Spouse transferred \$ X in cash to Trust. On Date 3, Spouse transferred \$ Y in cash to Trust. On Date 4, Spouse transferred \$ Z in cash to Trust. Dates 1 through 4 are prior to December 31, 2000. Spouse died on Date 5.

Taxpayer and Spouse retained an accountant to prepare their respective Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, to report the transfers and allocate GST exemption to Trust. On the Forms 709, Taxpayer and Spouse consented to treat all gifts as made one-half by each pursuant to § 2513. However, on the Forms 709, the accountant failed to allocate Taxpayer's and Spouse's GST exemption to the transfers.

The failure to allocate GST exemption was discovered when Taxpayer retained an attorney to revise her estate planning documents. Taxpayer represents that no GST distributions or terminations have occurred and that she has sufficient GST exemption to allocate to the portion of the transfers for which she is the transferor.

Taxpayer is requesting an extension of time under § 2642(g) and §§ 301.9100-1 and § 301.9100-3 to allocate GST exemption to the portion of the transfers for which she is the transferor.

Law and Analysis:

Section 2513(a) provides generally that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every GST, which is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for the dates at issue, provided that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2642(b)(1), as in effect for the dates at issue, provided that, except as provided in § 2642(f), if the allocation of the GST exemption to any property is made on a gift tax return filed on or before the date prescribed by § 6075(b) or is deemed to be made under § 2632(b)(1) then the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12, and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2) and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting

comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the deemed allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax

professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to allocate her GST exemption to the portion of the transfers for which she is the transferor. The allocations will be effective as of the date of each transfer.

Taxpayer should make the allocations on supplemental Forms 709 and file the forms with the Internal Revenue Service, Cincinnati Service Center—Stop 82, Cincinnati, Ohio 45999. Taxpayer should attach a copy of this letter to each form.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Karlene M. Lesho

By: _____
Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes